

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

IN RE: Bair Hugger Forced Air Warming  
Products Liability Litigation

MDL No. 15-2666 (JNE/FLN)

This Document Relates to All Actions.

**SHORT FORM COMPLAINT AND  
JURY TRIAL DEMAND**

**PLAINTIFF(S)**

CYNTHIA ALSTON CASH  
\_\_\_\_\_

**VS.**

**3M COMPANY AND ARIZANT  
HEALTHCARE, INC.**

1. Plaintiff, CYNTHIA ALSTON CASH, states and brings this civil action in MDL No. 15-2666, entitled *In Re: Bair Hugger Forced Air Warming Products Liability Litigation*. Plaintiff(s) [is/are] filing this Short Form Complaint as permitted by Pretrial Order #8 of this Court.

**PARTIES, JURISDICTION AND VENUE**

2. Plaintiff, CYNTHIA ALSTON CASH, is a resident and citizen of the State of NORTH CAROLINA and claims damages as set forth below.

3. Jurisdiction is proper based upon diversity of Citizenship.

4. Proper Venue: The District Court in which remand trial is proper and where this Complaint would have been filed absent the direct filing order by this Court is DURHAM COUNTY, NC.

5. Plaintiff brings this action [*check the applicable designation*]:

X

On behalf of [himself/herself];

**FACTUAL ALLEGATIONS**

6. On or about JULY 2013, Plaintiff underwent surgery during which the Bair Hugger Forced Air Warming system (hereinafter “Bair Hugger”) was used during the course and scope of [his/her] surgery at the Duke University Hospital [medical center and address], in DURHAM, NC [city and state], by Dr. Samuel David Stanley.

7. Contaminants introduced into Plaintiff’s open surgical wound as a direct and proximate result of use of the Bair Hugger during the subject surgery resulted in Plaintiff developing a periprosthetic joint infection (“PJI”), also known as a deep joint infection (“DJI”).

8. As a result of Plaintiff’s infection caused by the Bair Hugger, Plaintiff has undergone MULTIPLE PROCEDURES [Describe treatment(s) received, e.g., revision arthroplasty, wound vac treatment, multiple staged procedures, etc.] on or about \_\_\_\_\_, at \_\_\_\_\_ [medical center(s) and address(es)] by Dr(s). \_\_\_\_\_. [Cross out if not applicable.]

**ALLEGATIONS AS TO INJURIES**

9. (a) Plaintiff claims damages as a result of (check all that are applicable):

X

INJURY TO HERSELF/HIMSELF

\_\_\_\_\_

INJURY TO THE PERSON REPRESENTED

\_\_\_\_\_

WRONGFUL DEATH

\_\_\_\_\_

SURVIVORSHIP ACTION

X

ECONOMIC LOSS

(b) Plaintiff's spouse claims damages as a result of (check all that are applicable): [*Cross out if not applicable.*]

      

LOSS OF SERVICES

      

LOSS OF CONSORTIUM

10. Defendants, by their actions or inactions, proximately caused the injuries to Plaintiff(s).

**DEFENDANT-SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY**

11. The following claims and allegations are asserted by Plaintiff(s) and are herein adopted by reference (check all that are applicable):

X

FIRST CAUSE OF ACTION - NEGLIGENCE;

X

SECOND CAUSE OF ACTION - STRICT LIABILITY;

X

FAILURE TO WARN

X

DEFECTIVE DESIGN AND MANUFACTURE

X

THIRD CAUSE OF ACTION – BREACH OF EXPRESS WARRANTY;

X

FOURTH CAUSE OF ACTION- BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY LAW OF THE STATE OF NORTH CAROLINA, §§       ;

X

FIFTH CAUSE OF ACTION- VIOLATION OF THE MINNESOTA PREVENTION OF CONSUMER FRAUD ACT;

X

SIXTH CAUSE OF ACTION – VIOLATION OF THE MINNESOTA DECEPTIVE TRADE PRACTICES ACT;

X

SEVENTH CAUSE OF ACTION- VIOLATION OF THE MINNESOTA UNLAWFUL TRADE PRACTICES ACT;

X

EIGHTH CAUSE OF ACTION- VIOLATION OF THE

MINNESOTA FALSE ADVERTISING ACT;

X

NINTH CAUSE OF ACTION- CONSUMER FRAUD  
AND/OR UNFAIR AND DECEPTIVE TRADE PRACTICES  
UNDER LAW OF THE STATE OF NORTH CAROLINA,  
           §§                      ;

X

TENTH CAUSE OF ACTION – NEGLIGENT  
MISREPRESENTATION;

X

ELEVENTH CAUSE OF ACTION- FRAUDULENT  
MISREPRESENTATION;

X

TWELFTH CAUSE OF ACTION – FRAUDULENT  
CONCEALMENT;

          

THIRTEENTH CAUSE OF ACTION – LOSS OF  
CONSORTIUM; and

X

FOURTEENTH CAUSE OF ACTION – UNJUST  
ENRICHMENT.

In addition to the above, Plaintiff(s) assert the following additional causes of action  
under applicable state law:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

*[Cross out if not applicable.]*

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff(s) pray for judgment against Defendants as follows:

1. For compensatory damages;
2. Pre-judgment and post-judgment interest;
3. Statutory damages and relief of the state whose laws will govern this action;
4. Costs and expenses of this litigation;

5. Reasonable attorneys' fees and costs as provided by law;
6. Equitable relief in the nature of disgorgement;
7. Restitution of remedy Defendants' unjust enrichment; and
8. All other relief as the Court deems necessary, just and proper.

**JURY DEMAND**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff(s) hereby demand(s) a trial by jury as to all claims in Complaint so triable.

Dated: 6/30/2016

Respectfully submitted,

/s/ BEHRAM PAREKH  
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